

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **VICE-CHAIRMAN DAN McGEE**, on April 24, 2003 at 2:00 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cindy Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SR 11, 4/23/2003
Executive Action:

HEARING ON SR 11

Sponsor: Sen. Duane Grimes, SD 20, Clancy.

Proponents: Judy Martz, Governor, State of Montana
Karla Gray, Chief Justice, Montana Supreme Court
Jim Mockler, Judicial Nomination Commission
Travis Ahner, Montana Trial Lawyers Association
Sen. Brent Cromley, SD 9, Billings

Opponents: None.

Informational

Witnesses: District Court Judge John A. Warner

Opening Statement by Sponsor:

Sen. Duane Grimes, SD 20, Clancy, explained that SR 11 fulfills the requirement under Section 5-5-303 which requires the Senate Judiciary Committee to concur in nominations for the Montana Supreme Court. Sen. Grimes introduced John Arnan Warner and his wife, Kay, to the Committee. Sen. Grimes stated that Judge Warner began his career in law in this same room when it was the Supreme Court Chambers. Sen. Grimes submitted Judge Warner's resume for the Committee's consideration as EXHIBIT(jus87a01). Judge Warner resides in Havre, Montana, and has served in Havre as a district court judge for over twenty years. Prior to that time, Judge Warner was a chief senior litigator with the law firm of WEBER, BOSCH, KUHR, DUGDALE & WARNER in Havre. He also served as the Havre City Attorney from 1984-88. Sen. Grimes stated Judge Warner has a wealth of experience, having tried between 150-200 jury trials. From his discussion with Judge Warner, Sen. Grimes believes Judge Warner is fully committed to proving himself in the electorate process and has elections in his past. Judge Warner and his wife have six grown children, most of whom reside in Montana, and 12 grandchildren. Sen. Grimes distributed an estimate of Judge Warner's current caseload as EXHIBIT(jus87a02). and noted that domestic relations is a quarter of Judge Warner's current caseload. Sen. Grimes felt Exhibit 2 is a good indication of the breadth of Judge Warner's experience.

Proponents' Testimony:

Judy Martz, Governor of the State of Montana, presented Judge John A. Warner, of Havre, to fill the vacancy on the Montana Supreme Court created by the resignation of Associate Justice

Terry Trieweiler. **Governor Martz** stated there were three excellent candidates for the vacancy, but stated **Judge Warner** rose to the top, like cream does with milk. **Judge Warner's** background and ethics are outstanding. **Governor Martz** submitted written testimony in favor of **Judge Warner's** nomination, **EXHIBIT(jus87a03)**. **Governor Martz** added she was impressed by **Judge Warner's** views of the law, and believes he will be a Justice who will interpret the laws and the Constitution to determine exactly what the law says, rather than attempting to re-write the law or make new law through judicial decisions. If **Judge Warner's** nomination is confirmed by the Judiciary Committee, his first day in the court will be May 2, 2003.

Karla Gray, Chief Justice of the Montana Supreme Court, commended the nomination of **Judge Warner** with her strongest recommendations. She believes **Judge Warner** is a judge full of integrity, ethics, and an ability to put in long hours. **Chief Justice Gray** has worked with **Judge Warner** on the District Court Council, and believes he is more than well-qualified to serve on the Supreme Court. Chief Justice Gray is looking forward to having a former trial judge on the Montana Supreme Court since they have been without a general jurisdiction trial judge for about ten years, and stated this has been a gapping hole in the perspectives of the court as a whole. **Chief Justice Gray** urged unanimous support of this Resolution.

Jim Mockler, representing the Judicial Nomination Commission, reported there were 15 applicants for the job and comments came from all over the spectrum. Comments were received in support of **Judge Warner** from trial attorneys, defense attorneys, and other judges. The comments consistently stated **Judge Warner** is extremely fair. **Mr. Mockler** feels we are fortunate to have **Judge Warner** sitting on the Montana Supreme Court.

Travis Ahner, representing the Montana Trial Lawyers Association, stated that MTLA's President, Mike Meloy, and Executive Director, Al Smith, sent regrets that they were unable to attend the hearing. On behalf of MTLA, **Mr. Ahner** expressed support of **Judge Warner's** appointment to the Montana Supreme Court. **Mr. Ahner** testified **Judge Warner** has a distinguished record as a trial court judge and MTLA members have found him to be a thoughtful and fair trial judge. **Mr. Ahner** commended **Judge Warner** for his willingness to continue serving the citizens of Montana as our newest Supreme Court Justice.

Sen. Brent Cromley, SD 9, Billings, has known **Judge Warner** since he started his legal career. **Sen. Cromley** emphasized the three things he believes are important for a Supreme Court Justice.

First, **Judge Warner's** legal background in litigation and the general practice of law will be a delight for litigation attorneys. Second, **Judge Warner** has a wealth of experience as a trial judge. Third, **Judge Warner** has a close association with the State Bar of Montana. **Judge Warner** has served on various committees and is a past-president of the State Bar of Montana.

Opponents' Testimony: None.

Informational Witnesses:

District Court Judge John A. Warner thanked the Committee and **Governor Martz** for the opportunity and trust and confidence. Because he was an attorney in another life, **Judge Warner** has many war stories. **Judge Warner** shared an anecdotal with the Committee about being a law clerk for the Supreme Court and having to escort an attorney from the Chambers at the directive of Justice Harrison. **Judge Warner** feels he has now come full circle, some thirty years later. He believes he is the same person now, but with a little more experience. **Judge Warner** has enjoyed his time practicing law and in the courtroom and has represented all types of clients. People like Robert Nelson, a district court judge, and Fred Weber, his former law partner, and **Leonard Langen**, a district judge from Glasgow, have had great influences on **Judge Warner**. **Judge Warner** stated it will be difficult to leave Havre, but is ready to take on a new challenge and a new life.

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL stated the Montana Constitution provides that the Supreme Court may make rules governing admission to the Bar.

SEN. O'NEIL stated that four Supreme Court Justices have ruled that only graduates of an accredited law school may sit for the bar exam, and three Supreme Court Justices disagreed and stated graduates of other schools should be allowed to sit for the bar exam. **SEN. O'NEIL** was interested to know what **Judge Warner** feels it would take for a person to be admitted to the Bar in Montana.

Judge Warner responded the question is about specific facts which he does not have before him and wants to know how he would rule in advance of hearing the facts. **Judge Warner** stated he would follow the law, and noted that he is a conservative gentlemen who believes qualifications for the practice of law are appropriate.

SEN. O'NEIL stated he is talking about rules **Judge Warner** would be making as a Supreme Court Justice, not about decisions. He asked **Judge Warner** if he believed graduates of a certain

monopolized accreditation system should be allowed to the State Bar exam.

Judge Warner answered if it were proven there was a monopoly, there should not be a monopoly. As qualifications come forward, there will be specific cases. These specific cases will produce specific facts which will be considered at that time.

SEN. JEFF MANGAN explained the Legislature has attempted to define a basic system of free, quality public education as set forth in our Constitution, and he wondered how **Judge Warner** interprets what the Constitution says about free quality education.

Judge Warner felt a person of the appropriate age after considering the factors in our social structure would be entitled to go to school. Quality is a policy decision initially before the Legislature. The Legislature sets the policy, the court interprets that policy when it has to. The presumption is the Legislature did it right.

SEN. MANGAN asked if the way the State funds education meets the standard as set forth in the Constitution.

Judge Warner replied as we stand here today, it does. The attitude is, and the case law says, the Legislature is presumed correct. The challenge is where the ruling may be required. When it is not necessary to decide, it is necessary not to decide.

SEN. MANGAN's last question was about the challenges faced by the Legislature about district court assumption. He asked if there was role for a Supreme Court Justice in the administration of the district court system and how he view's his experience as helping assist the Legislature.

(Tape : 1; Side : B)

Judge Warner stated lending his assistance as a member of the Supreme Court would require inquiry from the Legislature. If asked, he would share the benefit of his experience. However, **Judge Warner** noted he would assist when asked, regardless of whether he was a Supreme Court Justice. SB 176 appointed the Chief Justice or designee as the Chairman of the District Court Council which makes these decisions. Therefore, this a role for the Supreme Court. District court assumption has been a struggle because it came on fast. Whether or not it was the thing to do, was a decision made by the Legislature. Personally, **Judge Warner**

feels it was a logical decision, and he is optimistic about getting the bugs worked out.

SEN. Dan McGEE asked if **Judge Warner** has tried cases where he ruled on the constitutionality of a Montana statute and how many cases there were.

Judge Warner replied he has ruled on the constitutionality of a Montana statute in approximately 20 cases.

SEN. McGEE was curious whether these decisions were challenged to the Supreme Court and whether **Judge Warner's** decisions were overruled or upheld.

It has been **Judge Warner's** experience that most decisions on the constitutionality of a statute are not appealed.

SEN. McGEE asked **Judge Warner** for his philosophical opinion regarding the role of the Legislature and the role of the courts in determining the constitutionality of a statute.

Judge Warner replied the Legislature sets the policy, the Executive carries out the policies. When these policies are challenged, and the Court makes the decision on the challenge. **Judge Warner** assured **SEN. McGEE** that he has not, and does not intend to, pay lip service only to the roles of the various branches of government.

SEN. McGEE stated the Montana Supreme Court has not established rules for "compelling state interest." **SEN. McGEE** would like to know what "compelling state interest" means to **Judge Warner** as a term of legal art.

Judge Warner felt it conveys a right of an individual and the necessity of the government to impinge on that right. The necessity to do that has to be important. **Judge Warner** compared it to an individual's loss of liberty. The Legislature adopts a policy and the court says yes, this is a good policy.

SEN. GARY PERRY asked from what source **Judge Warner** derives the wisdom and the humility to judge others.

Judge Warner responded he is a religious man and renders under God and under Caesar.

Closing by Sponsor:

SEN. GRIMES feels this a great bill to end the 2003 Legislative Session. He believes **Judge Warner** has demonstrated his

character, knowledge, and judgment command respect, and he has an historical perspective, as well as a rural perspective, which the State of Montana needs. In addition, he believes **Judge Warner** has a clear view of the rule of law and the delicate balance between judicial discretion and legislative policy roles. **SEN. GRIMES** senses **Judge Warner** is a humble person. **SEN. GRIMES** acknowledged **Judge Warner's** wife for her important civic duties and the sacrifices she will make due to **Judge Warner's** public service.

EXECUTIVE ACTION ON SR 11

Motion: **SEN. CROMLEY** moved **SR 11 DO PASS**.

Discussion:

SEN. MIKE WHEAT congratulated **Judge Warner**. **SEN. WHEAT** stated everyone he has talked to has said good things about **Judge Warner** and his fairness and dedication to the process. **SEN. WHEAT** commended Governor Martz on her selection and feels **Judge Warner** is an excellent choice to fill the vacancy on the Montana Supreme Court.

SEN. McGEE was very impressed by **Judge Warner's** responses to the questions and feels Governor Martz made an outstanding choice.

SEN. CROMLEY explained the situation is unusual because the appointment has come during the Legislative Session. The Senate Judiciary Committee has a wide diversity of thoughts and philosophies.

SEN. O'NEIL thinks **Judge Warner** will be a wonderful addition to the Supreme Court and supports his nomination.

Vote: **SEN. CROMLEY's** motion **SR 11 DO PASS** carried **UNANIMOUSLY**.

ADJOURNMENT

Adjournment: 2:47 P.M.

SEN. DAN MCGEE, Vice-Chairman

CINDY PETERSON, Secretary

DG/CP

EXHIBIT (jus87aad)